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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/721,120	11/22/2000	Devon A. Rolf	RFDV.69456	2986

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EXAMINER	
NGUYEN, HUY D	

ART UNIT	PAPER NUMBER
2681	

DATE MAILED: 02/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/721,120	ROLF, DEVON A.	
	Examiner	Art Unit	
	Huy D Nguyen	2681	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *14 October 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-29* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-29* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 10/14/2004 have been fully considered but they are not persuasive.

Regarding claim 1, the applicant stated that the wireless communications device as claimed is used to wirelessly retrieve at least one of said selected music recordings for complete storage of said music recording in said memory and for playback through the speaker by the player and that Walsh et al. do not teach or suggest the above claimed invention. The examiner states that limitation "one of said selected music recordings" is broadly claimed in claim 1. The claim does not clearly specify what the music recording is (is it the whole song, part of the song, or just a short portion of it?). Therefore, the preceding limitation is read by the teaching in Walsh et al. (see column 17, lines 16-18).

The applicant also stated that the presently claimed embodiments of the invention allows a user to download favorite music recordings for storage in the user's cellular phone or PDA. The music recordings can then be played without the need to establish and maintain a communications link with a remote server. The examiner states that the above limitation is not found in claim 1.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 11 and 12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 11 recites the limitation "said encoded music" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim 12 recites the limitation "said music recording" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-3, 5-6, 17, 24, and 26-29 are rejected under 35 U.S.C. 102(e) as being anticipated by Walsh et al. (U.S. Patent No. 6,144,848).

Regarding claims 1, 17, and 29, Walsh et al. teaches a system for playing prerecorded music, system comprising: a wireless communications device having a memory, a player, and a speaker (Fig. 1A, 1B); a remote storage facility, wherein remote storage facility stores a plurality of music recordings, wherein wireless communications device is used to wirelessly retrieve at least one of selected music recordings for complete storage of music recording in memory, and for playback through speaker by player (col. 3, lines 40-59; Fig. 1A).

Regarding claim 2, Walsh et al. teaches the system as set forth in claim 1, wherein wireless communications device comprises a voice communications device (e.g. microphone 129, speaker 128).

Regarding claim 3, Walsh et al. teaches the system as set forth in claim 2, wherein wireless communications device is a portable, handheld cellular communications device (Figs 4, 5).

Regarding claims 5-6, Walsh et al. teaches the system as set forth in claim 2, wherein a selected music recording is wirelessly transmitted from remote storage facility in data packets (col. 3, line 57; Fig. 15).

Regarding claim 24, Walsh et al. teaches the system as set forth in claim 17, wherein said memory is internally located in said device (see column 17, lines 16-18).

Regarding claims 26-27, Walsh et al. teaches the system as set forth in claim 17, wherein said music recording was downloaded to said device via a wireless communications link (Column 9, line 32).

Regarding claim 28, Walsh et al. teaches the system as set forth in claim 27, wherein said music recording was downloaded from an account associated with said device or a user of said device (Column 10, line 14).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Walsh et al. (U.S. Patent No. 6,144,848).

Regarding claim 4, Walsh et al. teaches the claimed invention except that the user device is installed in a vehicle. However, it is obvious that the user device as disclosed in Walsh et al. can be installed anywhere since it provides convenience and flexibility.

8. Claims 7-10, 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walsh et al. (U.S. Patent No. 6,144,848) in view of Donner (U.S. Patent No. 5,722,069).

Regarding claims 7-8, Walsh et al. teaches the claimed invention except a buffer through which encoded music is streamed. Donner teaches the decoder 114 including some buffer memory (Fig. 8; Col. 8, line 65). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include in the decoder of Walsh et al. a buffer memory as disclosed in Donner to prevent lost of audio data.

Regarding claims 9-10, 25, the combination of Walsh et al. and Donner teach the claimed invention except a removable memory. However, removable memory is well known and commonly used in the art. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use removable memory for convenience.

9. Claims 11-13, 18-20, 22-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walsh et al. (U.S. Patent No. 6,144,848) in view of Steele et al. (US 2002/0046084).

Regarding claims 11-13, 18-20, 22-23, Walsh et al. teaches the claimed invention except that the music recording is encoded in mp3 format. In the same field of endeavor, Steele et al. teaches the preceding limitation (see paragraphs [0034] and [0046]). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of Steele et al. to the teaching of Walsh et al. to conserve memory.

10. Claims 14-16, 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walsh et al. (U.S. Patent No. 6,144,848) in view of Buchheim (U.S. Patent No. 6,061,306).

Regarding claims 14-16, 21, Walsh et al. teaches the claimed invention except that said wireless communications device further comprises a display, wherein data indicative of at least one of an artist who recorded said selected music recording and a title of said music recording is stored in said memory of said wireless communications device and is displayed on said display during playback of said music recording. In the same field of endeavor, Buchheim teaches the preceding limitation (see figure 2; Column 8, lines 7-14). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of Buchheim to the teaching of Walsh et al. to provide convenience for users.

Conclusion

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huy D Nguyen whose telephone number is 703-305-3283. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Emanuel Moise can be reached on 703-306-0003. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

hdn

Huy Nguyen

JEAN GELIN
PRIMARY EXAMINER